

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE, SECURITIES AND BANKING**

_____)	
IN THE MATTER OF)	
)	
Surplus Review and Determination)	Order No.: 14-MIE-012
for Group Hospitalization and Medical)	
Services, Inc.)	
_____)	

FINAL CONSENT ORDER

BACKGROUND

1. Group Hospitalization and Medical Services, Inc. (“GHMSI”) is a federally chartered corporation domiciled in the District of Columbia (the “District”). GHMSI is licensed by the District as a hospital and medical services corporation under D.C. Code § 31-3501 *et seq.* and is subject to regulation by the District of Columbia Department of Insurance, Securities and Banking (“DISB”).

2. Under the Medical Insurance Empowerment Amendments Act (“MIEAA”), D.C. Law 17-369, the Commissioner of DISB “shall . . . review the portion of the surplus of [GHMSI] that is attributable to the District” at least every three years, and “may issue a determination as to whether the surplus is excessive.” D.C. Code § 31-3506(e). “If the Commissioner determines that the surplus of [GHMSI] is excessive, the Commissioner shall order [GHMSI] to submit a plan for dedication of the excess to community health reinvestment in a fair and equitable manner.” D.C. Code § 31-3506(g)(1). The term “Community Health Reinvestment” as used in this Consent Order is defined as “expenditures that promote and safeguard the public health of residents of the District of Columbia.”

3. In 2012, DISB began a review of GHMSI's 2011 surplus. On December 30, 2014, then DISB Acting Commissioner Chester McPherson issued an Order ("the December 2014 Order") determining that GHMSI's 2011 surplus was excessive and ordering GHMSI to submit a plan to dedicate the excess surplus to Community Health Reinvestment. In March 2015, GHMSI submitted a plan pursuant to D.C. Code § 31-3506, in which GHMSI argued that Community Health Reinvestment in which GHMSI had engaged since 2011 combined with underwriting losses attributable to the District satisfied GHMSI's obligations under MIEAA.

4. On December 18, 2015, Congress amended GHMSI's federal charter in Section 747 of the Financial Services and General Government Appropriations Act, 2016, enacted as part of the Consolidated Appropriations Act of 2016, Public Law No. 114-113 ("the Charter Amendment"). Among other things, the Charter Amendment provides that "[t]he corporation shall not divide, attribute, distribute, or reduce its surplus pursuant to any statute, regulation, or order of any jurisdiction without the express agreement of the District of Columbia, Maryland, and Virginia—(1) that the entire surplus of the corporation is excessive; and (2) to any plan for reduction or distribution of surplus." *Id.* The Charter Amendment "shall apply with respect to the surplus of Group Hospitalization and Medical Services, Inc. for any year after 2011." *Id.*

5. On June 14, 2016, former DISB Commissioner Stephen Taylor (the "Commissioner") issued an Order ("the June 2016 Order") temporarily limiting rate increases for GHMSI in the District of Columbia until entry of a final order in this matter, and stating the Commissioner's intention to formulate a plan for implementation of the December 2014 Order.

6. On August 30, 2016, Commissioner Taylor issued an Order ("the August 2016 Order") requiring GHMSI to pay certain rebates as a result of the December 2014 Order.

7. GHMSI filed an appeal of the December 2014 and August 2016 Orders with the District of Columbia Court of Appeals, No. 16-AA-967 ("the D.C. Appeal"). GHMSI's appeal

was consolidated with the appeal of the Appleseed Center for Law and Justice, No. 16-AA-895. On August 29, 2019, the District of Columbia Court of Appeals issued a decision affirming the Commissioner's Orders in part, vacating in part, and remanding to the DISB for further proceedings.

8. In July 2016, GHMSI filed a civil action in the United States District Court for the District of Maryland, Civil Action No. 16-CV-2656 ("the Federal Action"). On November 22, 2019, the Federal Action was dismissed without prejudice upon the parties' stipulation of dismissal.

9. DISB Commissioner Karima M. Woods (the "Commissioner") has worked diligently to address the District of Columbia Court of Appeals August 2019 Remand Order, including but not limited to coordinating with insurance regulators in Maryland and Virginia, issuing an order requiring the parties to engage in mediation and file briefs, and scheduling an evidentiary hearing.

10. The Commissioner and GHMSI do not waive any positions taken in the D.C. Appeal, the Federal Action, or in proceedings upon remand, but wish to resolve all disputes relating to GHMSI's 2011 surplus without additional expense and to further the best interests of GHMSI subscribers and the public.

11. GHMSI voluntarily agrees to carry out the Community Health Reinvestment specified in this Consent Order, which will provide for grants to fund Community Health Reinvestment as part of a comprehensive resolution of this matter.

12. The Commissioner concludes that there are risks to all parties arising from prolonged litigation of these matters. District governmental resources would be adversely affected by further proceedings or litigation in this matter, and further litigation will delay or even render unavailable the benefits and remedies that otherwise may be immediately provided under these

terms. The Commissioner further concludes that it is in the public interest and consistent with applicable law to enter into the terms of this Consent Order.

ORDER AND TERMS OF CONSENT

13. Based upon the foregoing, the Commissioner hereby ORDERS, and GHMSI consents to, the following:

a. GHMSI shall provide funds for Community Health Reinvestment in a total amount of Ninety-Five Million Dollars (\$95,000,000.00), which shall be used to fund grants for community health initiatives as provided in paragraphs i. to iii. below under the following terms and limitations:

i. A donor-advised Health Equity Fund will be created, which shall be managed by the Health Equity Committee. The Health Equity Committee (“Committee”) may administer the Health Equity Fund through no more than three (3) District-based foundations, which shall be selected by the Committee within three (3) months from the effective date of this Consent Order. GHMSI will provide Ninety-Five Million Dollars (\$95,000,000.00) to the Health Equity Fund. The provision of funds to the Health Equity Fund by GHMSI is and shall be considered Community Health Reinvestment under D.C. Code § 31-3505.01 et seq., and the parties agree that the Community Health Reinvestment shall not be considered a gift to the government of the District of Columbia. Upon request of the Health Equity Committee, GHMSI shall administer the Health Equity Fund. GHMSI will not seek reimbursement of its own expenses. If the Health Equity Fund is administered by one or more foundations those administrative costs shall be paid out of the Fund. Except as otherwise set forth in this Order, the full Community Health Reinvestment will be provided by GHMSI within 40 days of the final entry of this Order.

ii. The Committee shall be created within two months (2) months from the date of execution of this Consent Order, consisting of seven (7) members. Three (3) members

will be appointed by the Office of the Mayor. Three (3) members will be appointed by GHMSI. One (1) member will be a representative of the community, to be selected jointly by GHMSI and the Office of the Mayor. No appointee to the Committee will be an elected official, or an employee or representative of any District agency that regulates GHMSI or an affiliate of GHMSI. The Committee shall develop procedures within three (3) months from the effective date of this Consent Order that govern the process of awarding grants from the Health Equity Fund. The Committee will be responsible for monitoring and overseeing the use of funds.

iii. The purpose of investments to be made from the Health Equity Fund will be to improve the health and health equity of residents of the District of Columbia. The District of Columbia and GHMSI will enter a memorandum of understanding as to the processes to be used by the Committee when seeking, reviewing, and deciding upon specific requests for funding by the community. All funds will be disbursed within 5 years of receipt by the foundations. Costs for management of the Health Equity Fund and monitoring distributions and evaluating results will be paid from the Fund.

iv. The Committee shall distribute Four Hundred Thirty-Two Thousand Dollars (\$432,000.00) to DC Appleseed, which funds shall be used by DC Appleseed to improve the health and health equity of residents of the District of Columbia.

b. If any new Community Health Reinvestment obligations or obligations to provide funding (other than GHMSI's existing and future obligations under D.C. Code § 31-3505.01 and any obligations that may be determined by the Commissioner under D.C. Code § 31-3506 as to any surplus after 2011) are imposed upon GHMSI by District law during the period of time to which this Order applies, and those obligations are not generally applicable to all health insurers, GHMSI may treat such obligations as Community Health Reinvestment for purposes of meeting the requirements of this Consent Order. For the avoidance of doubt, GHMSI shall not

treat assessments by the District of Columbia Life and Health Insurance Guaranty Association or any similar assessments as Community Health Reinvestment for purposes of meeting the requirements of this Consent Order.

c. The Commissioner finds that GHMSI's commitments under this Consent Order, including subdivision a of this paragraph, satisfy GHMSI's obligation under D.C. Code § 31-3506(g) to submit a plan for dedication of its excess 2011 surplus to Community Health Reinvestment in a fair and equitable manner. The terms of this Consent Order may be enforced under D.C. Code § 31-3506 (i), subject to GHMSI's right to be heard prior to the issuance of any final order, on any issue addressed in such order, and subject to judicial review under District of Columbia law in the District of Columbia Court of Appeals.

d. This Consent Order is the final order of the Commissioner with respect to GHMSI's 2011 surplus and GHMSI's surplus for all prior years.

e. The August 2016 Order, which was issued to enforce the December 2014 Order, is vacated.

f. This Consent Order resolves and concludes all proceedings relating to DISB's review of GHMSI's surplus for the year 2011 and all prior years. Except as otherwise provided in this Consent Order, DISB will not institute or open any new proceeding or review related to GHMSI's surplus for 2011 or any prior year.

g. GHMSI does not admit to or concede the accuracy of any remaining portions of the December 2014 Order that in part serve as a basis for this Consent Order and does not waive any right or position taken in these proceedings or that may be asserted on appeal.

h. The findings of fact made in the December 2014 Order, and the methodology used therein, shall not have a binding effect on any future surplus determinations by the Commissioner or any future Commissioner.

i. The June 2016 Order and its restrictions on GHMSI rates are vacated. The Commissioner acknowledges that GHMSI's rate filings will be reviewed under the standards set forth in D.C. Code § 31-3311.01 *et seq.*

j. The Commissioner finds that it is in the public interest and consistent with applicable law to enter this Consent Order.

k. The Commissioner and GHMSI each retain every procedural and substantive right to participate fully and completely as a party to any appeal that may be taken from this Consent Order.

l. The parties hereby agree and recognize that this Consent Order is subject to the following conditions : (1) receipt of a written waiver by the DC Applesed Center for Law and Justice of any right to appeal this Order and a statement that it will not file, nor encourage, induce, or cause any other person to file, an appeal of this Order; (2) authorization by the Maryland Insurance Administration under the applicable terms of Maryland law; (3) authorization by the Virginia State Corporation Commission under the applicable terms of Virginia law; and (4) approval by the applicable CareFirst Boards of Directors. This Consent Order will not become a Final Order until these conditions are met.

m. The parties further agree that:

i. GHMSI will not appeal or otherwise legally challenge the resolution set out in this Consent Order.

ii. This Consent Order is not intended to create a private right of action by any third party, including but not limited to GHMSI's subsidiaries, affiliates, and subscribers, or give any other third party an enforceable right.

iii. If there is any appeal or legal challenge of this Consent Order by any person, all obligations of GHMSI under this Consent Order will be stayed until all appeals or legal challenges are final.

iv. If this Consent Order is vacated, modified, or reversed, no party will be foreclosed or estopped from pursuing any claim, appeal, defense, argument, challenge, or similar recourse that otherwise would be available at the time this Consent Order is executed. In addition, if this Consent Order is vacated, modified, or reversed, GHMSI withdraws its consent to provide and will not be obligated by this Order to provide the Community Health Reinvestment specified above.

v. The law of the District of Columbia will control the interpretation of this Consent Order, and it is subject to enforcement only in the District of Columbia Courts.

Karima Woods Digitally signed by Karima Woods
Date: 2021.03.19 13:14:34 -04'00'

KARIMA WOODS DATE
Commissioner
District of Columbia Department of Securities, Insurance and Banking



03/19/2021

BRIAN D. PIENINCK DATE
President and Chief Executive Officer
Group Hospitalization and Medical Services, Inc.